REMARKS

Claims 1-7, 12 and 13 are currently pending. In a final Office Action dated April 17, 2008, the Examiner rejected claims 1, 2, and 4 under 35 U.S.C. §103(a) as being unpatentable over Kokko (U.S. patent no. 5,790,534) in view of Applicant's Admitted Prior Art (AAPA). The Examiner rejected claim 3 under 35 U.S.C. §103(a) as being unpatentable over Kokko in view of AAPA and further in view of Laakso (U.S. patent no. 6,671,512), rejected claims 5, 7, 12, and 13 under 35 U.S.C. §103(a) as being unpatentable over Kokko in view of AAPA and further in view of Uesugi (U.S. patent application no. 2003/0072266), and rejected claim 6 under 35 U.S.C. §103(a) as being unpatentable over Kokko in view of AAPA and Uesugi and further in view of Simonsson (U.S. patent no. 6,950,669). The rejections and objections are traversed and reconsideration is hereby respectfully requested.

The Examiner rejected claims 1, 2, and 4 under 35 U.S.C. §103(a) as being unpatentable over Kokko in view of AAPA. Specifically, with respect to claim 1, the Examiner contended that Kokko teaches a method used in a base site (BS) (FIG. 1) that comprises determining a radio frequency (RF) load metric corresponding to a BS (FIG. 1, elements 14 B and C) and comparing the determined RF load metric to an RF load threshold to produce a comparison (col. 6, lines 34-46). The Examiner contended that Kokko further teaches determining whether the BS has adequate resources to handle transmissions to/from mobile stations. The Examiner acknowledged that Kokko fails to teach that the resources are a jitter buffer depth, but contended that AAPA teaches that a receiving communication device that is a cellular radiotelephone that includes a jitter buffer. The Examiner then contended that it would have been obvious to interpret the jitter buffer of the cellular radiotelephone as part of the resources of the BS in determining whether a system overload will occur.

Further, in response to the applicant's argument that Kokko merely teaches making pre-transmission adjustments at a transmitting end and does not teach a basis for making of adjustments associated with a post-transmission of data at a receiving end of a communication, that is, in a jitter buffer that stores the data at the receiving end, the Examiner contended that the AAPA, not Kokko, has been cited as the basis for making of

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adjustments associated with a post-transmission of data at a receiving end of a communication, that is, in a jitter buffer that stores data at a receiving end. The applicant respectfully disagrees with the Examiner's application of prior art to the pending application.

Claim 1 provides for determining a jitter buffer depth target of a receiving mobile station (MS) based on a comparison of a determined RF load metric corresponding to a base site to an RF load threshold. As acknowledged by the Examiner, Kokko teaches nothing concerning jitter buffers as the only buffers taught by Kokko are buffers for storing data packets about to be transmitted. Kokko merely teaches pre-transmission control of a communication at a transmitting end, that is, a determining of whether to allocate a channel to the transmitting end for a transmission. Once the channel is allocated, the teachings of Kokko end.

Nevertheless, the Examiner contended that Kokko teaches determining, by a BS, an RF load metric corresponding to the BS, comparing the determined RF load metric to an RF load threshold, and determining whether it has BS has adequate resources to handle transmissions to/from MSs and the AAPA then teaches a jitter buffer at a MS, and thus a combination of Kokko and the AAPA teaches the claimed jitter buffer at an MS. However, the mere determining of an RF load metric by a BS and a comparing, by the BS, of the determined RF load metric to an RF load threshold cannot be construed to teach a controlling, by the BS, of anything other than resources at the BS. That is, Kokko teaches the BS allocating spreading codes (channels) and data rates. These are resources that are allocated to a BS and capacity constrained at the BS. Nowhere does Kokko teach a BS with knowledge of resources internal to an MS or a controlling of resources that are solely within the province of an MS. The fact that the AAPA teaches another type of resource, and more particularly a jitter buffer, that is resident in an element other than a BS, and in particular at an MS, does not in any way teach or imply the BS controlling such a resource, let alone how the BS would control such a resource. This link is missing in the combination of Kokko and the AAPA.

Therefore, neither Kokko nor AAPA, individually or in combination, teach the features of claim 1 of determining a jitter buffer depth target of a receiving MS based on

a comparison of a determined RF load metric corresponding to a BS to an RF load threshold. Accordingly, the applicant respectfully requests that claim 1 may now be passed to allowance.

The Examiner rejected claim 6 under 35 U.S.C. §103(a) as being unpatentable over Kokko in view of AAPA and Uesugi and further in view of Simonsson, contending that Simonsson teaches determining to transmit frames at a higher power level when a determined RF load metric is lower than an RF load threshold (FIG. 6, step 604, and col. 7, lines 51-58). The applicant respectfully disagrees.

The cited step and section of Simonsson merely state that power may be increased or decreased to bring a data rate to a target level. Nothing here indicates that Simonsson is teaching anything other than the well-known concepts of increasing a transmit power in a high interference environment to improve reception and achieve a target data rate, and decreasing a transmit power in a low interference environment to conserve resources and minimize interference with other channels, as a lower signal power then may be applied while implementing acceptable reception (or the next paragraph of Simonsson which similarly teaches the well-known concept of increasing a transmit power in a high interference environment to achieve a target C/I and decreasing a transmit power in a low interference environment to conserve resources and minimize interference with other channels, as a lower signal power may be applied to achieve the target C/I). In fact, column 1, lines 20-27, of Simonsson clearly indicate that this is the teaching of Simonsson. By contrast, claim 6, as amended, teaches determining to transmit frames at a higher power level when the determined RF load is less than the RF load threshold, which is the opposite of the teachings of Simonsson. None of Kokko, AAPA, Uesugi, or Simonsson teaches this feature.

For the above reasons, and since claims 2-7, 12, and 13 depend upon allowable claim 1, the applicant respectfully requests that claims 2-7, 12, and 13 may now be passed to allowance.

As the applicant has overcome all substantive rejections and objections given by the Examiner and has complied with all requests properly presented by the Examiner, the

applicant contends that this Amendment, with the above discussion, overcomes the Examiner's objections to and rejections of the pending claims. Therefore, the applicant respectfully solicits allowance of the application. If the Examiner is of the opinion that any issues regarding the status of the claims remain after this response, the Examiner is invited to contact the undersigned representative to expedite resolution of the matter. Furthermore, please charge any additional fees (including extension of time fees), if any are due, or credit overpayment to Deposit Account No. 50-2117.

Respectfully submitted,
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